

CASE SUMMARY

INFORMATION ON PROPOSED SETTLEMENT OF LITIGATION

CASE NAME	<u>Markwins International Corp., et al. v. California Coastal Communities, et al.</u>
CASE NUMBER	KC 047384 (Lead Case) Related to Case Nos. BC 346577, BC 328366, and BC 337403
COURT	Los Angeles County Superior Court, East District, Pomona Courthouse
DATE FILED	November 28, 2005
COUNTY DEPARTMENT	Department of Public Works
PROPOSED SETTLEMENT AMOUNT	Receipt of \$270,000 and authorize transfer of \$240,000 to the City of Industry and Industry Urban Development Agency in exchange for future defense and indemnification
ATTORNEY FOR PLAINTIFF	Michael Sandstrum, Esq. Bremer Whyte Brown & O'Meara, LLP (949) 221-1000
COUNTY COUNSEL ATTORNEY	Frederick W. Pfaeffle Principal Deputy County Counsel (213) 974-1951
NATURE OF CASE	Plaintiffs Markwins International Corp. et al. ("Markwins") have brought this suit against the County of Los Angeles ("County"), the Los Angeles County

Flood Control District ("District"), the City of Industry ("City"), the Industry Urban Development Agency ("Agency") and several private entities alleging subsidence damages to their property as a result of a storm drain owned and operated by the District and designed and constructed by the City, Agency and the private entities.

In 1998, the District issued a permit to allow the Agency to design and build Miscellaneous Transfer Drain ("MTD") 1536 as a replacement for the District's open rectangular flood control channel at San Jose Creek. The Agency and the City sought to place the District's channel underground so as to allow for the development of the parcel of land above the channel. The Agency hired several private entities to design and build MTD 1536.

At or near the time of the construction of MTD 1536, the Agency sold the undeveloped parcel of land above MTD 1536 to Koll Development, Inc. ("Koll"), for future development.

In 1999, the District issued a separate permit to Koll for the construction of MTD 1582, which includes District's Lines D, E and F (collectively, "Laterals"). The Laterals connect to MTD 1536 at various locations, as discussed below.

In late 1999, Koll and the other Private Entities designed and constructed a 300,000 square foot industrial building and parking lot ("Property") on the parcel above MTD 1536. Plaintiffs purchased the Property shortly thereafter.

A portion of MTD 1536 runs directly underneath the Property from east to west. The remaining portions of MTD 1536 run underneath the parking lots of three neighboring properties. The connection between MTD 1536 and Line D is located underneath the east parking lot of the Property. The connections between MTD 1536 and Lines E and F are located underneath the parking lot of the neighboring property to the north-east of the Property.

Shortly following completion of the building, Plaintiffs noticed land subsidence at the Property above MTD 1536 and filed a claim against the County and the District. Plaintiffs' engineer claims that poor compaction of the supporting backfill and bedding material along the entire length of MTD 1536 (i.e., underneath the Property, as well as adjacent properties) is the primary cause of the subsidence. Although MTD 1536, itself, does not appear to be damaged, the subsidence has caused minor damage to the Laterals.

In 2005, Plaintiffs filed this action alleging claims for subsidence damage to the Property based on several causes of action including inverse condemnation, negligence and nuisance. The District and County filed cross-complaints against the City, the Agency, Koll and the other private entities involved in the design and construction of MTD 1536 and the Laterals seeking indemnity against the claims of Plaintiffs, and damages and repair costs for the entire alignment of the storm drain.

The case was vigorously litigated, with significant discovery being undertaken by all parties.

Due to the risks and uncertainties of litigation, the office of the County Counsel, in conjunction with the Department of Public Works, is recommending a global settlement in the amount of \$970,00 whereby the District and County will receive \$270,000. The District and the County will pay \$240,000 of this settlement amount to the City and the Agency in exchange for their agreement to indemnify and defend the County and District against potential future claims relating to compaction, settlement or land subsidence within the backfill trench zone which lies along or surrounding MTD 1536 outside of the Plaintiffs' Property. The District will apply the remaining \$30,000 for minor repairs to the Laterals outside of the Plaintiffs' Property.

PAID ATTORNEY FEES, TO DATE	\$285,756
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PAID COSTS, TO DATE	\$65,940
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